

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.815 of 2007

Sambasivam

.. Petitioner

Vs

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition & Excise Department
Fort St. George, Chennai 600009.

2. The Commissioner of Police
Greater Chennai Police
Egmore, Chennai 8.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Sankarasubbu
for Mr.V.Devendhiran

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner is the father of the detenu Viji @ Vijayakumar. The detenu was incarcerated by order dated 26.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 26.5.2007 in Memo No.218/BDFGISSV/2007 against his son, who is now confined at Central Prison, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenu before this Court

and set him at liberty.

2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 5.5.2007 at about 11.00 hours. On receipt of reliable information, in respect of Crime No.80/2007 on the file of T3 Korattur Police Station for the offence punishable under Section 379 IPC, the police personnel surrounded the detenu standing at MTH Road, Padi near Padavattamman Koil bus stop, who threatened them at the knife point. When they went near to apprehend him, the detenu rushed to cut Thiru.Mohanraj, a Police Constable, on his neck and the said Mohanraj warded off the attack with his left hand. He sustained a bleeding injury on his left hand. The public, who were at the bus stop, noticing the atrocious activities, joined with the police and rushed to apprehend the detenu. On seeing the public, the detenu picked up soda bottles from the nearby shop and hurled the same against them. The bottles fell on the road, broken into pieces and the broken pieces scattered all over the road. The public and the shopkeepers ran here and there fearing danger to their lives and properties. By his action, the detenu created panic. With the help of public, the police personnel arrested the detenu and remanded him to judicial custody. In this regard, a case was registered in Crime No.387/2007 for the offences punishable under Sections 341, 332, 336, 427, 307 and 506(ii) IPC.

3. The second respondent, taking note of the above case as a ground case and finding that there are six adverse cases pending against the detenu and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground that the specific pleas made on behalf of the detenu in the representation dated 28.6.2007 that the detenu was assaulted by the police while he was under their custody, which necessitated him to file HCP No.669 of 2007, was not considered by the respondents in the order of rejection dated 25.7.2007 and therefore, the order of detention is vitiated on the ground of non application of mind.

5. A perusal of the representation made on behalf of the detenu dated 28.6.2007 makes it clear that there was a specific plea that the detenu was assaulted by the police while he was in their custody. It is stated in the order of detention that at the time of remand, the detenu has represented to the learned District Munsif cum Judicial Magistrate, Ambattur that he was assaulted by the police on the thigh and the back and the learned Magistrate also recorded that there was no external injury over the body. The detaining authority had called for an explanation on the above aspect and the Inspector of Police in his report has stated that the detenu was not assaulted by any police and also denied the allegation. However, the detaining authority while passing the order of rejection

dated 25.7.2007, rejecting the representation of the detenu dated 28.6.2007, had not chosen to consider the grievance of the detenu.

6. In the circumstances, we are satisfied that the second respondent had not applied his mind while considering the representation made on behalf of the detenu. Accordingly, the impugned order of detention is quashed. The habeas corpus petition is allowed. Consequently, the detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To:

1. The Secretary to Government
State of Tamil Nadu
Prohibition & Excise Department
Fort St. George, Chennai 600009.
2. The Commissioner of Police
Greater Chennai Police
Egmore, Chennai 8.
3. The Superintendent
Central Prison
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public [Law and Order] Department,
Fort St. George, Chennai 9.

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